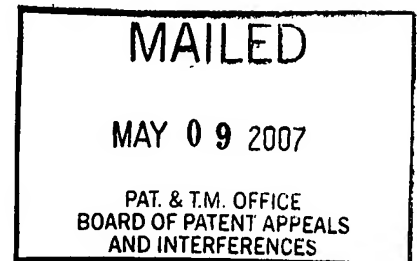


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEV KORENEVSKY

Application 10/037,548
Technology Center 1700



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on January 31, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

On July 12, 2006, the Board remanded the Application to the Examiner in a paper entitled, "Order Remanding To The Examiner." On page 2 of the Remand, the Board states:

Also, although the examiner states that "[t]he statement of the status contained in the brief is correct" (page 2 of Answer), the examiner has not stated a rejection of claim 9, nor has the examiner stated that claim 9 is allowable. Hence, the examiner

should clarify on the record whether the final rejection of claim 9 is maintained or whether claim 9 is allowed.

On October 23, 2006, the Examiner mailed to the Appellants an Examiner's Answer in response to the Remand. On page 3 of the Examiner's Answer, it states the following:

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: The final rejection of claim 9 is not under appeal and therefore, the rejection of claim 9 will be maintained. The rejection of claim 9 was included in the answer for clarity and consistency.


According to the Examiner, "the rejection of claim 9 will be maintained." The Examiner also states on page 6 of the Examiner's Answer "Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Jang et al. (USPN 5497627)." However, the Examiner fails to include the Jang et al reference, as argued in Claim 9, on page 3 of the Examiner's Answer, under the Heading "Evidence Relied Upon".

Before further review, the Examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the Grounds of Rejections. See the Manual of Patent Examining Procedure, (MPEP) § 1207.02. Appropriate correction is required.

Accordingly, it is **ORDERED** that the application is returned to the Examiner to:

- 1) issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, heading (8) of the Examiner's Answer; and
- 2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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